IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO.22 OF 2002

The Commissioner of Customs)
(Import) Bombay, having his)
office at New Customs House,)
Ballard Estate, Mumbai-400 038.)..Applicant.

V/s.

1. M/s.Mahesh India, having)
office at 808/815, Cotton)
Exchange Building, Kalbadevi,)
Mumbai - 400 002.)
)
2. Shri. Mahesh D. Joshi,)
Mahesh India, 808/815,)
Cotton Exchange Building,)
Kalbadevi, Mumbai-400 002.)
)
3. M/s.Polysynth Polymers,)
Manjula Niwas, Adj. Sambhav)
Darshan, Jambali Galli,)
S.V. Road, Borivali (W),)
Mumbai - 400 092.)
)
4. Mr. H.R.Parekh,)
M/s.Polysynth Polymers,)
Manjula Niwas, Adj. Sambhav)
Darshan, Jambali Galli,)
S.V. Road, Borivali (W),)
Mumbai - 400 092.)
)
5. Shri. K.C. Shah, Room No.)
43, 16/B, Babulnath Chawl)
Chowpatty, Mumbai-400 005.)..Respondents.

Mr.P.S.Jetly with Mr. R.C.Master for applicant.

Mr.Anil Balani for respondent Nos.1 & 2.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 12TH JULY, 2006.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. This application filed by the revenue under section 130A of the Customs Act, 1962 was admitted on 24th February, 2005 on the following substantial questions of law :-

(i) Whether the show cause notice dated 22.3.1993 issued by the Asstt. Director, Directorate of Revenue Intelligence (DRI), Mumbai, was competent to issue the said notice which was issued under Section 28 and 124 of the Customs Act, 1962 ?

(ii) Whether the order passed by the Hon'ble CEGAT being the order dated 8.2.2002 while dismissing the Department's Appeal only on the ground that the notice under Section 28 of the Customs Act, 1962, has not been issued by the proper Officer as contemplated under Section 28 of the Customs Act, 1962 without considering the fact that the show cause notice was issued not only under section 28, however the same has also been issued under section 124 of the Customs Act and the Hon'ble CEGAT has not at all considered the effect of Section 124 of the Customs Act, 1962 and has dismissed the Appeal of the Department only on the ground that show cause notice has not been issued by the proper Officer as contemplated under section 28 of the Customs Act, 1962 ?

2. The dispute in the present case pertains to the show cause notice issued by the Directorate of Revenue Intelligence unit of the customs department ('D.R.I.' for short) on 22/3/93 in respect of the goods

admittedly cleared on provisional assessment basis.

3. By an order in original dated 9th February, 1996, the Commissioner of Customs, Mumbai had held that the above show cause notice issued by DRI was bad in law because the goods were provisionally assessed and moreover final assessment order has been passed on 22/6/94 that is after the impugned show cause notice by DRI.

4. Challenging the aforesaid order, the revenue filed an appeal before the CEGAT. By the impugned order, the Tribunal while dismissing a group of appeals including the appeal relating to the respondents herein held that the show cause notice under section 28 would not be maintainable in respect of the provisionally assessed goods. The Tribunal further held that where the case is not covered by provisional assessment, the show cause notice issued by D.R.I. cannot be sustained because they are not the proper officers. Hence this appeal.

5. Mr.P.S.Jetly, learned counsel appearing on behalf of the applicant brought to our notice a Judgment of this Court in the case of Commissioner of Customs V/s. Electron Textile Exports (P) Ltd. & Anr.

[Customs Appeal No.41 of 2005 dated 14th June, 2006], wherein it is held that the officers from the D.R.I. are entitled to issue show cause notice under section 28 and section 124 of the Customs Act, 1962. Accordingly, Mr.Jetly submits that the Tribunal was in error in dismissing the appeal filed by the revenue against the order passed by the Commissioner of Customs, Mumbai.

6. It is true that in the light of the Judgment of this Court in the case of Electron Textile Exports (P) Ltd. & Anr. (supra), the findings recorded by the Tribunal that the officers of D.R.I. are not entitled to issue show cause notice under section 28 and 124 of the Customs Act cannot be sustained. However, in view of the finding given by the Tribunal that on the date on which the impugned show cause notice was issued, the goods were provisionally assessed, the impugned notice was not maintainable. Therefore, even if the D.R.I. had jurisdiction to issue show cause notice, in the facts of the present case, since the goods were provisionally assessed, there could not be any short levy and consequently show cause notice on the ground of short levy could not be issued.

7. We make it clear that the findings given by the

Tribunal that the officers from the D.R.I. unit are not empowered to issue show cause notice cannot be sustained in the light of the decision of this Court referred to hereinabove. However, in view of the finding recorded by the Tribunal that on merits the show cause notice could not be sustained, no useful purpose would be served by calling reference on the issue relating to the jurisdiction of D.R.I. officials to issue a show cause notice.

8. In this view of the matter, we are of the opinion that this is not a fit case for calling a statement of the case from the Tribunal. Accordingly, the rule is discharged with no order as to costs.

(V.C.DAGA, J.)

(J.P.DEVADHAR, J.)